

EXHIBIT F

C45ZBOUS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

08 CR 365 (SAS)

5 VIKTOR BOUT,

6 Defendant.

7 -----x

8 April 5, 2012

9 4:40 p.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: BRENDAN McGUIRE

ANJAN SAHNI

Assistant United States Attorneys

18 ALBERT DAYAN

19 KENNETH KAPLAN

Attorneys for Defendant

20
21 Also Present: Andrew Harkuscha, Russian Interpreter
22 Yana Agoureev, Russian Interpreter
23 Anna Mazurova, Russian Interpreter
24
25

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1 THE DEPUTY CLERK: All rise:

2 THE COURT: All right, please be seated.

3 Good afternoon, Mr. McGuire.

4 MR. McGUIRE: Good afternoon, Judge.

5 THE COURT: Good afternoon, Mr. Sahni.

6 MR. SAHNI: Good afternoon, your Honor.

7 THE COURT: Good afternoon, Mr. Kaplan.

8 MR. KAPLAN: Good afternoon, your Honor.

9 THE COURT: Good afternoon, Mr. Dayan.

10 MR. DAYAN: Hi, Judge.

11 THE COURT: Good afternoon, Mr. Bout.

12 And I assume that's an interpreter or translator?

13 MR. DAYAN: He is. That's Andrew Harkuscha. He will
14 be the one interpreting Mr. Bout's statement, if Mr. Bout
15 decides to address the Court.

16 THE COURT: All right. In the meantime, is he going
17 to interpret what's said in the courtroom?

18 MR. DAYAN: No.

19 THE COURT: No.

20 MR. DAYAN: That's not our intention.

21 THE COURT: Mr. Bout, is that okay with you? We'll
22 proceed in English, okay.

23 All right. I have reviewed the revised presentence
24 report dated January 30th, 2012, together with the sentencing
25 recommendation and the addendum of the same date.

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1 I've also reviewed a letter from defense counsel dated
2 March 27th, 2012, a response from the government dated
3 March 30th, 2012 attaching a proposed order of forfeiture, and
4 another letter from defense counsel dated April 4th, 2012, but
5 received today, April 5th, 2012.

6 In addition, I've reviewed an undated letter from Lisa
7 Bout, the defendant's daughter.

8 I've also reviewed an April 2nd, 2012 letter from the
9 Consulate General of the Russian Federation in New York,
10 attaching the following documents: 1st, a statement from the
11 Russian Ministry of Foreign Affairs, which I will call the MFA,
12 of the Russian Federation dated November 16th, 2010; 2nd,
13 comments made by Russia's Official MFA representative, Mr. A.
14 K. Lukashevich regarding the decision rendered by the New York
15 Court in the matter of V.A. Bout dated November 3rd, 2011; 3rd,
16 a press release regarding the meeting between MFA
17 Representative K.K. Dolgov with Representatives of the American
18 Embassy concerning Bout, dated November 10, 2011; and, 4,
19 responses from MFA representative Dolgov to a question
20 submitted by the Interfax Agency dated December 19th, 2011.

21 I've also reviewed an April 4th, 2012 letter from
22 something known as Freedom against Censorship Thailand, which
23 attached an excerpt from an article in the New Yorker entitled
24 "How Casinos in China made Siu Yun Ping rich."

25 All of those materials will be docketed.

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1 Now, Mr. Dayan, have you had the opportunity to review
2 the report, the recommendation, the addendum, the Government's
3 letter and all the other materials I've just described?

4 MR. DAYAN: I have, Judge.

5 THE COURT: And have you gone over all of those
6 materials with your client?

7 MR. DAYAN: I have.

8 THE COURT: Do you have any objections to anything in
9 the presentence report, other than what you've raised in your
10 submission?

11 MR. DAYAN: I have no objections but for the factual
12 findings.

13 THE COURT: Everything, right, everything you raised
14 in you submission.

15 Okay. Mr. McGuire, have you reviewed the report, the
16 recommendation, the addendum and defense counsel's two letters,
17 and all of the other materials I've just described?

18 MR. MCGUIRE: Yes, Judge.

19 THE COURT: Do you have any objections to anything in
20 the presentence report?

21 MR. MCGUIRE: We do not.

22 THE COURT: Now, there was trial here, so it's
23 unlikely we will have a factual dispute, but let me,
24 nonetheless, ask -- which I usually do at this point -- are
25 there any factual issues in dispute here that would require a

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1 Fatico hearing? We can't name issues at the trial that the
2 trial jury already decided, but there are there any other
3 factual issues in dispute that are material to the sentence
4 that you feel would require a hearing either side. Mr.
5 McGuire?

6 MR. McGUIRE: None from the government's perspective,
7 Judge.

8 MR. DAYAN: None from the defense, Judge.

9 THE COURT: All right. I, therefore, adopt the
10 findings of fact in the presentence report, which, as I already
11 said, do reflect the verdict in the case.

12 Defendant was convicted of four counts by a jury
13 verdict. The first two counts, conspiracy to kill U.S.
14 Nationals and conspiracy to kill officers and employees of the
15 United States, permit a maximum sentence of life in prison, but
16 carry no mandatory minimum term in custody. The third count,
17 conspiracy to acquire and use anti-aircraft missiles, also
18 permit a maximum sentence of life imprisonment, but require a
19 mandatory minimum sentence of 25 years in custody. The fourth
20 count, conspiracy to provide material support or resources to a
21 foreign terrorist organization, permits a sentence of up to 15
22 years in custody, but requires no mandatory minimum term.

23 I shall now calculate the guidelines. All counts are
24 grouped together for guideline purposes as they arise out of a
25 single course of conduct. The base offense level is determined

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1 by the most serious offense, which is the third count. The
2 base offense level for that count is 18 based on section
3 2K2.1(a)(5) of the Guidelines, because the offense involved
4 firearms described in 26 U.S.C. Section 5845(a). A ten level
5 enhancement to level 28 is warranted by Section 2K2.1(b)(1)(E)
6 because the defendant conspired to sell 5,000 AK-47 machine
7 guns, C4 explosives, and millions of rounds of ammunition. A
8 15 level enhancement to level 43 is warranted by Section
9 2K2.1(b)(3)(A) because the offense involved surface to air
10 missiles which is a destructive device defined in the statute.
11 Because the defendant engaged in arms trafficking, a further
12 four level enhancement to level 47 is warranted pursuant to
13 Section 2K2.1 (b)(5). An additional four level enhancement to
14 level 51 is warranted because the defendant conspired to
15 transfer firearms and ammunition with the knowledge that they
16 would be used in connection with another felony, namely, to
17 kill United States nationals, officers and employees.

18 Finally, because the offense involved or was intended
19 to promote a federal crime of terrorism, defined as an offense
20 that "is calculated to influence or affect the conduct of
21 government by intimidation or coercion or to retaliate against
22 government conduct," An additional 12 level enhancement to
23 level 63 is warranted pursuant to Section 3A1.4(a) of the
24 guidelines.

25 The government argues that because Mr. Bout expressed

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1 that he was -- this is a quote -- that because he was
2 "personally supportive of the FARC's armed campaign against the
3 United States in Colombia," this revealed Bout's intent to
4 assist the FARC and in retaliating against Americans for their
5 involvement in Colombia. And that quote was from the
6 Government's submission at page 11, note four.

7 Because Section 3A1.4(a) of the guidelines applies to
8 this case for the reasons just described, namely, this is a
9 federal crime of terrorism based on Bout's intent to assist the
10 FARC in retaliating against the Americans for their involvement
11 in Colombia, the defendant falls in criminal history category
12 six, the highest criminal history category, even though he has
13 no prior convictions.

14 His guideline range at offense level 63, criminal
15 history category six, is life in prison.

16 Before proceeding, I will briefly address the two
17 primary issues raised by the Russian submissions. The first
18 issue concerns the legality of Bout's extradition from
19 Thailand. I've already ruled on this issue, and any further
20 arguments on this issue must now be addressed to the Court of
21 Appeals.

22 The second issue concerned the conditions of Bout's
23 confinement. As soon as this issue was raised by Bout's
24 counsel, I ordered the Bureau of Prisons to transfer Bout out
25 of the Special Housing Unit where he had been held in solitary

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1 confinement, and the Bureau of Prisons complied with that
2 order. Hopefully, after sentencing, the Bureau of Prisons will
3 continue to place him in general population, rather than in
4 solitary confinement.

5 With that, Mr. Dayan, do you wish to be heard?

6 MR. DAYAN: Yes, Judge. I would like to ask your
7 Honor to modify the word "hopefully" to a recommendation.

8 THE COURT: Of course.

9 MR. DAYAN: If possible.

10 THE COURT: I will make a recommendation on the
11 judgment and commitment form. You do understand that it would
12 still only be a recommendation to the Bureau of Prisons.

13 MR. DAYAN: Yes, Judge. I understand.

14 May I, Judge, use the podium?

15 THE COURT: Of course.

16 MR. DAYAN: Thank you.

17 I promise, Judge, this is not going to be another
18 three and a half hour summation.

19 THE COURT: No.

20 MR. DAYAN: Your Honor knows this case very well,
21 knows the arguments I made on paper, and I'm not going to
22 attempt to repeat them.

23 I do want to ask your Honor just to recall several
24 statements that your Honor had made during the course of the
25 proceedings in this case and trial.

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1 Your Honor did indicate, once, when this case -- at
2 the inception of this case that the case against, the case
3 against Victor Bout and the evidence against Victor Bout was
4 weak to begin with. I recall your Honor making that statement.
5 I --

6 THE COURT: I don't recall that, and I must say having
7 sat through the trial, the evidence was not weak, but go ahead.
8 The evidence is the tapes, as you know, but let's continue.

9 MR. DAYAN: This was not during the course of the
10 trial, Judge.

11 THE COURT: I understand that. I don't recall that
12 comment.

13 MR. DAYAN: I think that by going through the trial, I
14 think it became more evident, for me at least and for the
15 defense, and I believe for anyone who was in this courtroom,
16 that the evidence against Viktor Bout was extremely weak,
17 Judge. There was nothing but talk. Everyone talked, both
18 sides playing their respective roles; the DEA agents, the DEA
19 operatives pretending to be a bogus FARC, Victor Bout
20 pretending to wanting to sell them arms.

21 But when the Prosecutor stands up, Judge, and asks
22 your Honor to sentence Viktor Bout to life in imprisonment --
23 and they will use very strong language like, you know, kill
24 Americans, and terrorism, and breath taking quantity of arms.
25 And this is all -- and I've always argued, Judge, that this is

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1 nothing but inflammatory language that is used by the
2 government and has been always used by the government to
3 prejudice the -- to prejudice either the fact finder, or now
4 your Honor at the time of sentencing; prejudice the defendant
5 in the eyes of your Honor at the time of sentencing. Because
6 ultimately I will ask the government, and I actually challenge
7 them to point to any piece of evidence where it's something
8 that Viktor Bout did, whether it's something that Viktor Bout
9 attempted to do in this case, besides just getting on an
10 airplane with two pamphlets of airplanes that he intended to
11 sell. What did he do in this case that they can actually, in
12 good conscience, ask your Honor to sentence him to life
13 imprisonment?

14 I understand that the government in this case does not
15 want to accept our proposition, and our position and our belief
16 that Viktor Bout is innocent. And we don't want to. And we
17 asked the jury and we still ask your Honor and we ask the world
18 not to accept the Government's position that he's guilty. But
19 I just fail to understand how reasonable legal minds with
20 experience, educated people, people who have lived, people who
21 know life, people who know people, how can they argue that the
22 facts of this case does not have what I call built-in
23 reasonable doubt. And what I mean by built-in reasonable
24 doubt, what that means is that no one in this case who sat
25 through the facts of this case, can or should say, without any

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1 hesitation, that Viktor Bout intended to sell arms. Because
2 the government has no such evidence. They can point to
3 nothing, except Viktor Bout's words. That's all this case was
4 about, it was about words.

5 And for us to drag in a foreign man from a foreign
6 country to whom our criminal laws are foreign, and prosecute
7 him for words that he had just spoken, to me is -- will seem an
8 extremely draconian measure for anyone who does not reside in
9 the United States. For Viktor Bout, who goes to this meeting,
10 and he talks about selling arms and he talks about his hate for
11 America and for Americans, those are just words, Judge, words
12 that are protected by our Constitution. There was nothing that
13 he did in furtherance of those words. He got on a plane, he
14 came to the meeting

15 (Continued on next page)

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1 MR. DAYAN: How is a foreign person supposed to know
2 that it is enough just for the missiles count, that it is
3 enough just to say something that could be interpreted as an
4 agreement without having to do anything in furtherance of that?
5 It's mind boggling.

6 I would dare to declare, Judge, that 70 percent of
7 this audience would not even know that if they are sitting
8 somewhere and discussing missiles, this can be interpreted as
9 an agreement, that they could be facing a sentence of 25 to
10 life without even having to lift themselves from the chair.

11 It's an irony, Judge, that the case of Viktor Bout is
12 prosecuted in this building. Because it is the Patrick
13 Moynihan federal building, who coined the memorable phrase,
14 defining deviancy down. It is encapsulates how standards of
15 what is acceptable are generally eroding.

16 The missiles count is a new count drafted by the
17 United States Congress. It doesn't even require an overt act.
18 It doesn't even require somebody to get up and do anything
19 about it. Will it later become that if somebody even thinks
20 about missiles that they can get 25 to life?

21 You see, I bring the issue, and this notion of
22 built-in reasonable doubt, it's not something that I've
23 created. We, as defense lawyers in state practice, use it very
24 often because we believe that it is the good-faith basis of a
25 prosecutor, regardless of his own feelings, regardless of what

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1 he feels, if a case has been built in reasonable doubt, like I
2 argue to your Honor this case has built in reasonable doubt,
3 they cannot and should not prosecute this case. But they still
4 did. The U.S. Attorneys still prosecuted Viktor Bout and I
5 believe they did it and they felt that they could do it because
6 they could argue to your Honor and to anyone else that Viktor
7 Bout is actually a bad guy. So it's okay if there is any doubt
8 in this case. He deserves to be punished because he's a bad
9 guy.

10 And we, as Americans, are powerful, self-righteous,
11 God's jury in this case. We can take it upon ourselves to
12 punish him for his prior deeds. And that is wrong, Judge.
13 That is completely wrong, regardless of whether we live in
14 America, the greatest country in the history of the world. It
15 is just wrong. Because I can stand here, Judge, and I can draw
16 parallels and I can draw from the Old Testament where people
17 would act as God's jurors where they would sell their own
18 brother into slavery and felt that they were doing God's work,
19 and that's just wrong.

20 No one deserves, no innocent person deserves because
21 there is no greater sin to condemn an innocent person for a
22 crime that he did not commit because he may be a bad guy.
23 Judge, I have written about this extensively and I've cited to
24 your Honor cases. I'm not going to repeat everything. But I
25 found no comparable case in the history of the United States

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1 that was so clearly demonstrated as this case where the State
2 Department or even the White House under the second Bush
3 administration had explicitly gave an order to go out and get a
4 man, not to investigate a man, but to go out and get him.

5 It reminds me of this old outdated doctrine which we
6 no longer use in the federal system. It's called the Silver
7 Platter Doctrine. I know it's used in different types of
8 cases, but here it's used in the following way, where it was
9 told to the Justice Department, the DEA agents, get us this
10 man's head on a silver platter. And that's what the agents did
11 in this case. They had admitted that once we were going to go
12 get Bout, we were going to get him, not that we were going to
13 investigate him, not that we were going to see if he is still
14 involved in transporting arms. We were going to go get him.
15 And it could not have been, Judge, because Bout posed a threat
16 to the United States. That couldn't have been that.

17 Because Agent Brown, who is here today, testified to
18 his credit honestly, that he did not have any information that
19 Viktor Bout ever targeted the lives or the interests of the
20 United States. And I have said this before. The United States
21 had combed the world and they found no one that can come and
22 testify. No one can tell them that Bout had delivered arms
23 after 2000, after the year 2000. And it couldn't have been
24 because Viktor Bout was a danger to the national security
25 because the United States' own admission shows that they used

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1 his services during the ill-advised Iraq war. They went after
2 him. They got him.

3 Again, I don't want to get into how they got him,
4 Judge, although I'm very tempted, but I won't. But he is here
5 now because he spoke negatively against Americans. The
6 evidence against him, Judge, was weak. It was extremely weak.
7 The only thing they had against him was pure prejudice. I
8 remember one of the jurors made a statement in the New York
9 Times to Mr. Noah Rosenberg that the way he looked, she said
10 the way he looked, sort of like identified with his past. What
11 is an innocent man supposed to do? Is he supposed to jump up
12 and down? Is he supposed to get on his knees? How is he
13 supposed to act? There is no comparable case in the United
14 States.

15 The only comparable case that I know of, Judge, is
16 from 1898 in France, during the Dreyfus Affair. It was an
17 identical type of a situation where for their own political
18 reasons they had orchestrated an investigation and prosecuted a
19 man, an innocent man. And they used the same type of
20 inflammatory language that Dreyfus was -- he was a Jew who
21 basically had conspired against espionage against France. The
22 mob, when they hear things like that, they eat that up because
23 the mob has a mind and energy of its own. That's what happened
24 in this case.

25 When Mr. Brendan McGuire stands and argues that he

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1 wanted to kill Americans, we need to set an example to the
2 world. I agree with Mr. Brendan McGuire that an example should
3 be sent to the world because I myself, as a father to three,
4 nothing is more important than the safety of our servicemen and
5 women over seas.

6 There is also this conscious side, Judge, that talks
7 about an innocent man spilling innocent blood for that. It's
8 not right. When I say spilling blood, Judge, I'm not saying
9 that Viktor Bout is going to be executed, of course. I'm
10 saying, when they ask for life, it's a life.

11 I wrote to your Honor that the way this case was
12 choreographed by the DEA, it was done in such a way that I have
13 to ask your Honor for 25. I don't want to ask your Honor for
14 25. I want to ask your Honor for a hearing, although I
15 promised Ken Kaplan that I will not. I want to ask your Honor
16 for a hearing, why they went after Viktor Bout, because it
17 doesn't matter that he was convicted. If they went after him
18 because of vindictiveness, because of someone's personal
19 politics, the conviction is unlawful.

20 I can't ask your Honor for 25. I can only say 25 is a
21 lot. When Congress had enacted these statutes, they were meant
22 for terrorists, people who were bent on destroying this
23 country, people who were not deterred by a sentence of life.
24 This is not Viktor Bout. He is no terrorist.

25 The difference between 25 and anything more, Judge, is

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1 really a life sentence. I'll explain to you why. Because the
2 man is 45 years old. Although he has complete faith that he
3 will be home soon and that the truth will prevail. It did in
4 the Dreyfus Affair. And no matter how much we may talk about
5 France, they did the right thing eventually. And I believe
6 that the United States will do the right thing as well.

7 He's 45, Judge. At 25, the man could still come home
8 at 65 and see his daughter, who is in the audience right now,
9 maybe see her children. Anything more than that, it's taking a
10 life. He didn't hurt anyone. Like your Honor described, he
11 was a businessman, like we have businessmen in the United
12 States.

13 If America, rightfully so, wants to send a message to
14 the world, don't sell arms to anyone who will use it against
15 Americans, it's a great message and I support it; again, not at
16 the expense of an innocent man. But I think the message is
17 made from this case, Judge. I think the message is sent. I
18 ask your Honor not to sentence him to any more than is required
19 by the statute.

20 Of course, I can get into the fact that the sentencing
21 guidelines are advisory. We all know that, Judge. I don't
22 want to waste your time. Thank you.

23 THE COURT: Thank you, Mr. Dayan.

24 Mr. Bout, do you wish to say anything before sentence
25 is imposed?

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1 THE DEFENDANT: Your Honor, I am not guilty. I never
2 intended to kill anyone, and I never intended to sell any arms
3 to anyone. God knows this truth. And this truth is known by
4 these people here. And they will live with this truth. They
5 will go to bed with this truth. They will get up with this
6 truth. They will have to raise their children with this truth
7 and they will love their wives with this truth.

8 I'm thankful to America, people with a clear
9 conscience, like Ken Kaplan, like Albert Dayan. Even the two
10 guys whose names I don't even know because they treated me with
11 respect. I'm thankful to Albert Dayan who proved my innocence.
12 Let God forgive me and you will answer to him, not to me. Time
13 will answer for me and my country and my compatriots. Thank
14 you.

15 THE COURT: Thank you, Mr. Bout.

16 Mr. McGuire, did you wish to be heard?

17 MR. MCGUIRE: Yes, Judge. Thank you.

18 We are here today because of a series of choices, a
19 series of choices that the defendant made over a period of
20 months, a series of choices that generated proof beyond a
21 reasonable doubt that he agreed to provide an arsenal of
22 weapons to kill Americans.

23 THE DEFENDANT: It's a lie (In English).

24 MR. MCGUIRE: We are here based on a quantity of proof
25 that primarily consists of his own words, his own recorded

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1 words, spoken words at meetings and on phone calls, and written
2 words and drawings in e-mails and on paper.

3 Now, your Honor has previously found, because the
4 defense has raised throughout this case, that there was no
5 outrageous conduct committed by the government in this case.
6 There was no coercion. Nobody made Viktor Bout do what he did.
7 Nobody made him say what he said. Nobody made him act in a way
8 he did. He is an intelligent and sophisticated and experienced
9 man. He could have withdrawn at any moment. He could have
10 said to Andrew Smulian, I am not interested in this deal. I am
11 no longer in the weapons business. He made a choice not to.
12 Day after day, meeting after meeting, call after call, he
13 continued to pursue the deal. And so the jury so found.

14 Mr. Dayan has chosen not to focus at all in his
15 written submissions or today on his client's conduct. Instead,
16 as he has throughout this case, he is focused on the
17 government's conduct. He continues to malign the DEA, he
18 continues to malign the white house, and today, as in his
19 written papers, he maligned Mr. Sahni and myself.

20 Your Honor has found as well this was not a vindictive
21 prosecution. This prosecution, as the government has
22 proffered, was based on Viktor Bout's documented history of
23 supplying arms to some of the world's most destabilizing and
24 dangerous individuals and regimes. A, perfectly acceptable
25 reason to initiate an investigation, to quote your Honor.

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1 Now, only Mr. Dayan understands his reasons for
2 focusing so heavily on the government's conduct, but such
3 claims are irrelevant to our purposes here today and, frankly,
4 they don't merit any response, so I am not going to speak of
5 them any further. But it is interesting, because they are
6 revealing in the sense that they do reveal an effort to divert
7 our attention away from Mr. Bout's conduct, from his history,
8 which, along with the other 3553(a) factors, should be our
9 focus today, and I know the Court is focused on those. We have
10 provided the Court what we hope is a thorough and helpful
11 submission, and we do not want to belabor the points made
12 there.

13 I would like to make three brief points that I believe
14 warrant further discussion.

15 First, I think a seemingly minor but extremely
16 revealing fact. It was Viktor Bout, not the confidential
17 sources, who suggested the quantities of weapons throughout
18 this case. Neither Andrew Smulian nor the confidential sources
19 ever proposed these quantities. It was Viktor Bout. For
20 example, when Andrew Smulian showed up in Moscow in January and
21 went into Viktor Bout's study and said that the FARC needs
22 surface to air missiles, it was Viktor Bout who called Peter
23 Mirchev and it was Viktor Bout who said there was 100 available
24 immediately, 100 surface to air missiles available for a client
25 I have not even met yet, but I have just been able to arrange

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1 them from the comfort of my own home. That's a chilling
2 thought.

3 Similarly, and as we know, at the meeting in Bangkok
4 six weeks later he agreed to provide 100 immediately and 7 to
5 800 in total. At that meeting the sources asked, we also need
6 C4 plastic explosives. He then said, how many tons do you
7 need, tons? When they said, we will take one, he said, I can
8 get you five, five tons of C4 plastic explosives, 10,000 pounds
9 of explosives, at his suggestion.

10 These are just two examples from throughout that
11 meeting and those transcripts which we reviewed in detail over
12 the course of a trial. But those two examples alone speak to
13 why Viktor Bout's conduct, and particularly his tone and his
14 command during the Thailand meetings are so chilling. Here was
15 a man seated across from two Spanish-speaking South American
16 men in a hotel in Bangkok talking about weapons and drugs and
17 killing people, and he didn't hesitate once. He was not only
18 in his element, he was in control.

19 His words and his actions as reflected by the
20 transcript do more, we would submit, than just establish his
21 guilt beyond a reasonable doubt. They reveal exactly why the
22 DEA targeted him and why a sentence of life imprisonment is
23 appropriate. Drone aircraft, land mines, fake end user
24 certificates, cover loads of flower and fruit, and purchasing a
25 foreign bank to engage in money laundering. All of these were

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1 his ideas brought up without any urging, all for two men he had
2 just met for the first time who had told him they had planned
3 to kill American pilots.

4 These kind of statements in this day and age would
5 have been alarming if they were made by an amateur who had
6 appeared maybe was puffing and trying to impress a couple of
7 guys he just met. But in 2008 there are only a few people in
8 the world who had demonstrated they were capable of turning
9 these kind of words into action.

10 And one of those people was Viktor Bout, a man who
11 watched a video about the benefits of pipe bombs used by the
12 FARC and the IRA prior to the meeting in Bangkok and then
13 during that meeting, without prompting, congratulated the FARC
14 for using pipe bombs, saying that they were genius. By his own
15 words, recorded words, the accuracy of which have never been
16 challenged, he said he had done 5,000 operations like this,
17 including weapons deliveries to UNITA during the civil war in
18 Angola. By the mutually-consistent testimony of Charles Mukoto
19 and James Roberts, he did it in the late 1990s in Rwanda during
20 the regional conflicts there. And this is not hard to believe,
21 given the fluency that he employed and demonstrated in the
22 language of weapons trafficking throughout this case.

23 What he said and how he said it, as we discussed and
24 as we showed during the trial, was simply chilling. Because he
25 had closed on weapons deals in the past, it made it all the

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1 more chilling. If this scenario were as real as the defendant
2 believed it to be, he could have made this deal happen. I
3 don't think we need a set of UN sanctions or the
4 weapons-related documents on his computer to conclude that.
5 Common sense compels that conclusion.

6 After listening to those hours of recordings and
7 considering the increasingly interconnected world in which we
8 live, we submit it is simply naive to think or to conclude that
9 Viktor Bout is simply a businessman. He and men like him, men
10 who will no doubt fill the vacuum left, now that he has been
11 arrested, men who flourish in the gray arms markets are willing
12 to profit from violence and conflict.

13 There are a lot of eyes on this courtroom here today
14 and there are many who will be interested in this sentence. We
15 submit that as a result, general deterrence, as we have said in
16 our submission, is therefore critical in this case and that a
17 sentence of simply the mandatory minimum would be insufficient.

18 The second point I would like to make relates to the
19 lies Viktor Bout told to the panel of judges in Thailand during
20 his extradition proceeding. We have recounted those in our
21 submissions. I will not repeat them. But two of the most
22 egregious were that nobody in the meeting in Bangkok said they
23 were members of the FARC.

24 MR. DAYAN: Judge, I have to object to that only
25 because I thought your Honor said that you would not address

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Sentence.

1 the extradition process itself. Does not that not entail --

2 THE COURT: I said I wouldn't address it. I certainly
3 didn't mean that Mr. McGuire couldn't address it.

4 MR. DAYAN: I stayed away from it.

5 THE COURT: I said it was an issue for the Court of
6 Appeals now. But Mr. McGuire's point is I should consider what
7 he is going to call perjury that your client committed during
8 those proceedings.

9 Go ahead, Mr. McGuire.

10 MR. MCGUIRE: Mr. Bout stated in a written submission
11 to that court that he signed, among other things, that there
12 was no one at the meeting in Bangkok that were members of the
13 FARC and that there was no discussion about selling weapons to
14 the FARC.

15 He and his lawyers in Thailand also called a navy
16 official from the Thai navy, from the Thai military as a
17 witness to testify on his behalf. And subsequent to that
18 testimony, the head of the royal Thai navy submitted a letter
19 that rendered that witness' testimony false. These were both
20 attempts to undermine the Thai judicial process and the U.S.'
21 extradition request. We submit that these should not go
22 unrecognized in his sentence.

23 As your Honor is well aware, one of the first factors
24 listed under Section 3553(a) is to ensure that the sentence
25 promotes respect for the law. We submit that the defendant's

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Sentence.

1 sentence here should reflect his efforts to obstruct this
2 prosecution.

3 My third and final point, Judge, is that the
4 defendant's conduct in this case and his documented history
5 exceed that of an analogous defendant who has been sentenced in
6 this courthouse, Monzer al-Kassar. The quantities of weapons
7 and explosives and the nature of the services offered by Viktor
8 Bout simply dwarf those offered by Monzer al-Kassar.

9 As one point of comparison, Monzer al-Kassar agreed to
10 provide 15 surface to air missiles to the FARC. As I noted
11 earlier, this defendant agreed to provide 7 to 800.

12 In addition, Monzer al-Kassar was 18 years older than
13 Viktor Bout is now at the time of his sentencing, and the
14 30-year sentence imposed by Judge Rakoff in that case, which
15 was constrained by extradition-related assurances given to
16 Spain in that case, was effectively a life sentence because
17 Monzer al-Kassar was 63 at the time he was sentenced.

18 We submit that Viktor Bout's conduct warrants a more
19 severe sentence than that of Monzer al-Kassar, particularly
20 given that counsel has not pointed to any factors that mitigate
21 that sentence.

22 In closing, Judge, the government has never disputed
23 that this was a sting operation, investigation initiated by the
24 DEA to target the defendant. In fact, we would argue that it
25 would be irresponsible for U.S. law enforcement not to

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Sentence.

1 investigate the defendant, given his documented history of
2 fueling conflicts throughout the world. Not every sting
3 investigation proceeds identically, as your Honor is well
4 aware. Some prove to be a challenge to agents and prosecutors
5 because the targets do not decisively embrace the opportunity
6 that's proposed. Others can prove to be a challenge because
7 the targets do not appear capable of actually committing the
8 proposed crimes.

9 This is not one of those cases. Bout not only
10 decisively, immediately, and enthusiastically embraced the
11 opportunity to help the FARC kill Americans, he sought to
12 expand the opportunity to an extraordinary level in order to
13 develop a long-term relationship with the FARC, and we
14 respectfully request that his sentence reflect that.

15 Accordingly, the government respectfully requests that
16 the Court impose a sentence consistent with the guidelines of
17 life in prison. Thank you.

18 THE COURT: Thank you, Mr. McGuire.

19 I have a lot to say now. It's not going to be so very
20 short, but I don't think suspense is a good thing. I begin
21 with telling you the sentence I intend to impose and then
22 taking some time to explain it.

23 Based on my review of the statutory factors that I
24 will go through in a moment, I intend to impose a nonguidelines
25 sentence of 25 years in custody on Count Three, a sentence

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1 required by statute and 15 years on Counts One, Two, and Four,
2 all to run concurrently with each other and with the sentence
3 on Count Three, to be followed by five years of supervised
4 release. In addition, Mr. Bout is required to pay the
5 mandatory assessment of \$400, which payment is due immediately.
6 No fine is imposed based on the required forfeiture. There
7 will be a separate forfeiture order. I think the government
8 has proposed one.

9 I haven't heard you, Mr. Dayan, with respect to that,
10 but I am prepared to order forfeiture in the sum of \$15
11 million, which is the minimum value of the goods the defendant
12 intended would be used to commit the federal crime of terrorism
13 against the United States, its citizens, residents, and
14 property.

15 The mandatory drug testing condition is suspended due
16 to this Court's conclusion that this defendant poses little or
17 no risk of any future drug abuse. The defendant is to be
18 supervised in the district of his residence and the standard
19 conditions of probation as recommended by the probation
20 department shall apply.

21 The following special conditions shall also apply:
22 First, the defendant shall provide the probation officer with
23 access to any requested financial information; second, the
24 defendant shall not incur new credit charges or open additional
25 lines of credit without the approval of the probation officer;

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Sentence.

1 and, third, defendant shall obey the immigration laws and
2 comply with the directives of the immigration authorities.
3 Finally, defendant is to report to the nearest probation office
4 within 72 hours of release from custody, and is to be
5 supervised by the district of his residence.

6 Now, the reasons for the sentence.

7 Based on all of the sentencing factors set forth in 18
8 U.S.C. Section 3553, I conclude that a nonguidelines sentence
9 of 25 years in custody is sufficient but not greater than
10 necessary to serve the required purposes of sentencing.

11 I begin with the nature and circumstances of the
12 offense. Viktor Bout was a well known and long time
13 international arms dealer. He supplied arms over the years to
14 many violent regimes, including Angola, the Congo, Liberia, and
15 Rwanda. There is some evidence, although somewhat vague, that
16 he may have been poised to supply arms to Tanzania and Libya.
17 There is also some evidence, although again somewhat vague,
18 that he may also have supplied military equipment to U.S.
19 forces in Iraq in or around 2003 through some companies that he
20 owned in whole or in part. However, it is also the case that
21 the bulk of his known arms dealing activities ended more than a
22 decade ago. Based on his international arms dealing, in
23 particular to violent regimes, he was the subject of various
24 sanctions imposed by both the United Nations and the United
25 States.

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Turning to the instant case, in late 2007, the DEA initiated a sting operation with the intent of persuading Bout to agree to sell arms to the FARC, a terrorist organization operating in Colombia and using violence against the Colombian regime and American military support for that regime. The FARC efforts were financed, in part, through the cocaine trafficking business. Bout was approached by an old acquaintance from his arms dealing days in Africa, Andrew Smulian, who in turn introduced him to three confidential sources who Smulian believed to be members of the FARC who were in need of weapons. After Smulian met with these FARC imposters, he met with Bout in Moscow to discuss the transaction and Bout agreed to supply the FARC with the weapons they sought and with other weapons that he thought they could effectively use. Over the course of the two months or so that he corresponded with and met with Smulian, Bout researched the FARC and learned that they were a terrorist organization based in Colombia, who were using violence against the Colombian regime and against American military support for the regime. After meetings in Moscow and many telephone calls, e-mails and text messages, Bout traveled to Thailand to consummate the deal. At a meeting in Thailand with the imposter members of the FARC, as well as his colleague Smulian, he agreed to supply hundreds of surface to air missiles in addition to a vast array of other weapons. It is noteworthy, however, that he never actually received any money

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Sentence.

1 for his efforts, nor did he ever transfer any weapons. During
2 the meetings he expressed his sympathy with the cause of the
3 FARC and stated that he, too, disliked Americans and agreed
4 with the FARC's desire to harm Americans. After the meeting he
5 was arrested, placed in jail in Thailand, and fought
6 extradition to this country. He was eventually extradited,
7 tried, and convicted of the charged offenses already described.

8 Turning now to the history and characteristics of the
9 defendant.

10 This 45-year-old defendant was born in 1967 in
11 Tajikistan. His wife, Alla Bout, now age 48, resides in Moscow
12 with their 18-year-old daughter. At the time of his arrest,
13 Bout was living in Moscow. Over the years he has lived in
14 South Africa, United Arab Emirates, Belgium, Cyprus, Romania,
15 and Angola. Bout is multilingual. He is fluent in Russian,
16 English, Spanish, and several other languages. He was educated
17 in Tajikistan. Between 1985 and 1992, he was a lieutenant in
18 the Soviet Army. He served as a translator during that time.
19 Bout has been self-employed in the aviation field. He owned
20 and operated an air transport business.

21 Since at least 2000, Bout has been identified in the
22 international community as being responsible for arming a
23 number of international conflicts, particularly in those areas
24 where the weapons trade has been embargoed by the United
25 Nations. In March 2004, the UN Security Council adopted

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Sentence.

1 Resolution 1532, which found, in part, that Bout had supported
2 Charles Taylor's regime in his efforts to destabilize the
3 Sierra Leone and gain illicit access to diamonds. As a result,
4 all UN member states were directed to freeze any assets owned
5 or controlled by Bout.

6 In July 2004, four months after the UN resolution, the
7 president of the United States signed Executive Order 13348
8 which in part effectively prohibited Bout from engaging in
9 financial transactions within the United States. In October
10 2006, Bout was blacklisted again in Executive Order 13413,
11 which prohibited transactions to certain individuals found to
12 have contributed to the Congo civil war.

13 The next factor is the need for sentence imposed.

14 Obviously, the crimes of which the defendant stands
15 convicted require a lengthy period of incarceration. The only
16 question then before this Court was and is how long is needed
17 to properly punish this defendant. I conclude that 25 years is
18 sufficient for the following reasons:

19 This is a sting operation in which the government set
20 out to make a case against Viktor Bout for crimes that could be
21 charged and prosecuted in an American court. It is virtually
22 undisputed that until the DEA went after Bout, he had not
23 committed a crime chargeable in an American court in all his
24 years as an arms dealer. While he had been sanctioned by the
25 United Nations and the United States for his arms trafficking

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Sentence.

1 activities over the years, he was not under indictment by any
2 country or by any war crimes tribunal. There is no evidence
3 that he had broken the domestic laws of any country, or more
4 particularly, of the United States, although he was considered
5 to have violated international law. Interestingly, while the
6 assignment to make a case against Viktor Bout was given to the
7 Drug Enforcement Administration, there is no evidence that he
8 was ever involved in drug activity or that he had any
9 willingness to become involved with drug activity.

10 At the time the government initiated its case against
11 Bout, it is unclear whether he was still actively engaged in
12 the arms trade. Some evidence could lead to the conclusion
13 that he was still involved, such as conversations regarding
14 potentially supplying arms to Tanzania, Kenya, and possibly
15 Libya, but there is no evidence that he had actually supplied
16 arms to anyone in recent years. There was also no evidence
17 that he had ever committed any crimes against any American or
18 even expressed the desire to do so. The entire case against
19 him is that when presented with an opportunity to commit such
20 crimes, through an approach made by a friend he hadn't seen in
21 many years, he willingly accepted the opportunity and expressed
22 to his customer, namely, the FARC, that he shared their goals,
23 namely, to harm Americans. Whether this was simply good
24 business practice or an expression of his own goals can never
25 really be known. I can only say that there is no evidence that

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Sentence.

1 he ever expressed or acted on such goals prior to his two-month
2 involvement in this sting operation. While the government
3 argues that the fact that this case arises from a sting
4 operation is not a mitigating factor, I disagree. But for the
5 approach made through this determined sting operation, there is
6 no reason to believe that Bout would ever have committed the
7 charged crimes. It is certainly true that he may have
8 continued to sell arms in other places in the world, but there
9 is no reason to believe he would have committed any crime over
10 which American courts have jurisdiction. As a justice of the
11 United States Supreme Court recently said in a very different
12 context, this country does not purport to be the Supreme Court
13 of the entire world. Thus, this case is unusual and requires
14 that the Court weigh the facts relating to this offender by
15 constructing a fair, adequate, and reasonable sentence.

16 So the sentence must reflect the seriousness of the
17 offense and promote respect for the law and provide just
18 punishment for the offense, and I believe this sentence does
19 all of that.

20 It must also afford adequate deterrence to criminal
21 conduct, both general and specific, and I believe it does that.

22 It must protect the public from further crimes of the
23 defendant, and indeed the public does need protection from this
24 defendant. This defendant has spent a lifetime as a weapons
25 dealer who had no concern as to the identity of his customers

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Sentence.

1 or the use they would make of the weapons he sold. He has sold
2 weapons to some of the most vicious and violent regimes in the
3 world and has demonstrated that he would do so again if the
4 opportunity presented itself. However, it is unlikely that he
5 will have any knowledge of the latest weaponry or any contacts
6 in the arms trade when he is released from prison two decades
7 from now.

8 The next factor is to provide the defendant with
9 needed educational and vocational training or medical care or
10 other correctional treatment. None of those services are
11 needed here. It's not a factor.

12 Next factor is the kinds of sentences available. That
13 was not a factor here. There is a required mandatory jail term
14 of 25 years.

15 Then comes something that does take some time to
16 explain, and that's the guidelines sentence and applicable
17 policy statements. As you know, the guidelines call for life
18 imprisonment.

19 I have given serious consideration to the guidelines
20 and the policy statements. However, the guidelines here do not
21 produce a reasonable sentence. First of all, the use of the
22 terrorism enhancement to increase the offense level by 12
23 levels and to place the defendant in criminal history category
24 VI, despite no criminal record at all, creates an
25 extraordinarily high guideline range that I find is

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Sentence.

1 fundamentally unfair to this defendant, given all the
2 circumstances of this offense. In addition, a number of the
3 other enhancements that the guidelines required ratcheted up
4 the final offense level in a manner that does not reflect the
5 facts and circumstances of the crimes of which this defendant
6 was convicted. I have already explained the unique
7 circumstances here that make this case unusual if not sui
8 generis. I will not repeat all that I've already said except
9 to say, in a single sentence, that this defendant responded to
10 an opportunity to sell arms presented to him by others, but no
11 evidence was adduced either at trial or pretrial, for that
12 matter, that this defendant was actively looking for an
13 opportunity to become involved with a terrorist organization,
14 such as the FARC, Al-Qaeda, or Hezbollah, nor was there any
15 evidence ever introduced that he was looking for a way to
16 attack Americans rather than embracing an opportunity presented
17 to him.

18 Then there is the need to avoid unwarranted sentencing
19 disparity, and that goal remains an important goal that
20 survives the Booker analysis. However, this case is different
21 than most of the terrorism cases that I am familiar with. The
22 vast majority of terrorism cases around the country are
23 individuals who sought out opportunities to join a terrorist
24 organization for the sole purpose of harming Americans or
25 American interests. That is simply not the case here. As I

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Sentence.

1 have repeatedly said, there is no such evidence against
2 Mr. Bout. Yes, he embraced an opportunity to make money by
3 supplying a terrorist organization and claimed he had the means
4 to do that. Of course, we don't know for sure that he could
5 have. But he did not seek out such an opportunity because of
6 any long-held ideological based antipathy toward Americans or
7 American policies. For these reasons, the nonguidelines
8 sentence I'm imposing creates no unwarranted sentencing
9 disparity.

10 In his sentencing submission and again in argument
11 today, the government analyzes the sentencing disparity here by
12 referencing the 30 year sentence given to Monzer al-Kassar in a
13 similar sting operation involving the identical four counts of
14 conviction as those at issue here. The government also notes
15 that the less culpable defendants in that case received the
16 minimum 25-year sentencings, arguing that it would be wrong to
17 sentence Bout as if he were on a par with the less culpable
18 defendants in the al-Kassar case. However, the government
19 fails to note that the Court there had no choice but to
20 sentence those less culpable defendants to 25 years because
21 that was the required mandatory minimum. If that were not the
22 case, I suspect that the spread between the sentence given to
23 al-Kassar and that given to the less culpable al-Ghazi and
24 Godoy are greater than five years.

25 As for a comparison of the al-Kassar and Bout

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1 sentences, I can only say that every defendant and every
2 defendant's criminal activity are unique. No two cases are
3 identical. I can't know every factor that Judge Rakoff
4 considered in sentencing al-Kassar, but I do know that I have
5 considered all of the statutory factors that a court must
6 consider and have concluded that 30 years is not a reasonable
7 sentence for Mr. Bout, based on the facts of the case before
8 me. I do note that there was some evidence that al-Kassar was
9 involved with drug trafficking and the financing of terrorist
10 organizations and that he already received a substantial down
11 payment for his purported sale of arms to the FARC. I also
12 note that a sample of only two cases is far too small to
13 analyze an argument of unwarranted sentencing disparity.

14 Generally, the disparity argument is based on
15 thousands of sentences from around the country. As already
16 noted, most of the terrorism cases involve defendants who are
17 active members of the terrorist organization committed to
18 conduct acts of terrorism without any involvement by government
19 agents acting in an undercover capacity. The sample of cases
20 with the unusual facts of this case is far smaller, perhaps two
21 to three cases.

22 Those constitute are the reasons for my sentence. Are
23 there any legal objections before sentence is imposed,
24 Mr. Dayan?

25 MR. DAYAN: None from the defendant.

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Sentence.

1 THE COURT: Mr. McGuire.

2 MR. McGUIRE: No, your Honor.

3 THE COURT: Pursuant to the Sentencing Reform Act of
4 1984, it is the judgment of this Court that the defendant,
5 Viktor Bout, is sentenced to 25 years in custody on Count Three
6 and 15 years on Counts One, Two, and Four, all to run
7 concurrently with each other and with the sentence on Count
8 Three, to be followed by five years of supervised release.
9 Defendant shall be supervised in the district of his residence
10 and be required to adhere to the standard, mandatory, and
11 special conditions that probation set forth earlier. He is
12 further required to pay the mandatory assessment of \$400, which
13 payment is due immediately, and a \$15 million forfeiture.

14 I have already explained the reasons for the sentence,
15 and I order the sentence imposed as stated.

16 Mr. Bout, you have right to appeal both your
17 conviction and sentence within 14 days. If you cannot pay the
18 cost of appeal, you have a right to apply for leave to appeal
19 in forma pauperis.

20 Now, I already said I would make the recommendation to
21 the Bureau of Prisons that he not be placed in solitary
22 confinement. Are there any other recommendations that you
23 would ask for, Mr. Dayan?

24 MR. DAYAN: If possible, if he could be placed in the
25 general population and, if possible, if he could be housed

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1 somewhere next to the Tristate -- I know there is one in New
2 Jersey that's Fort Dix and -- for the simple reason, Judge, he
3 has no family here. His wife will go back to Russia. And I'm
4 working with him on issues of appeal. It would be taxing upon
5 his appellate lawyer to travel.

6 THE COURT: Given the length of the sentence I am sure
7 he will be assigned to a maximum security prison. I don't know
8 where the nearest maximum security prison is. I will certainly
9 recommend that he be placed in the appropriate prisons near to
10 New York as possible and that he not be placed in solitary
11 confinement, which I've already found is completely
12 unnecessary. Those recommendations I will make, but I cannot
13 recommend the specific institutions you suggested because I
14 don't think they apply to people convicted of these crimes.

15 Is there anything further?

16 Thank you.

17 o0o